vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5525 OF 2005

The Maharashtra State Co-op.
Bank Ltd. ... Petitioner

V/s.

Shri Ramesh M Arasa ... Respondent

Mr.R.G. Ketkar for Petitioner
Mr.P.K. Dhakephalkar with Mr.V.J. Hegde for Respondent

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **OCTOBER 24, 2005**

P.C.:

. The Petition challenges the concurrent findings of fact of the Courts below on the ground that the suit filed by the plaintiff i.e., the respondent herein was not maintainable against the Petitioner. The defendant raised two points: (1) that a notice under section 164 of the Maharashtra Cooperative Societies Act, 1960 was necessary prior to filing of the suit; (2) that the Small Causes Court has no jurisdiction to try the suit under section 41 of the Presidency Small Causes Court Act, 1882.

2. The main contention of the Petitioner is that section 164 of the Maharashtra Cooperative Societies Act

r/w bye-laws 4(c) and (l) require a notice to be issued to the Petitioner before any suit can be instituted against it under the Maharashtra Rent Control Act. Section 164 of the Maharashtra Cooperative Societies Act reads as under:

> 164. No suit shall be instituted against the Society, or any of its Officers in respect of any act touching the business of the Society, until the expiration of two months next after notice in writing has been delivered to the Registrar or left at this office, stating the cause of action, the name, description and place of residence of the Plaintiff and the relief which he claims, and the plaint shall contain a statement that such notice has been so delivered or left.

Bye-laws 4(c) and (l) of the Bye Laws of the Petitioner speak about what would constitute banking business. They read thus:

> 4(c) To open Branches and Regional Office in any part of the State of Maharashtra with the previous sanction of the Registrar and to grant loans and advances if necessary to individuals, partnership firms and cooperative societies.
>
> (I) Acquisition, construction, maintenance and alternation of any building or works necessary or convenient for the purpose of the Bank.

A notice under section 164 of the Maharashtra Cooperative Societies Act is required to be given to a society if the suit relates to the business of the society. The Petitioners are carrying on the business

of banking under the Banking Regulations Act, 1949. Taking or letting of premises on rent would not be included in the business of the society as its business is related to banking. The provisions of the Maharashtra Rent Control Act must prevail and no notice is required under section 164 of the Maharashtra Cooperative Societies Act before instituting a suit against the society under the former Act. In any event the terms ‘acquisition’ used in bye law 4(l) relates to acquisition of a building and therefore, would not be applicable to the suit premises.

3. The finding of the trial Court that notice under section 164 of the Maharashtra Cooperative Societies Act is not necessary must be confirmed. Reliance placed by the learned Advocate for the Bank on the judgment in the case of *Mohan Meakin Ltd. v/s. The Pravara Sahakari Sakhar Karkhana Ltd.*, **1987 Mh.L.J. 503** is of no avail. In that case the Division Bench of this Court held that Section 164 applies to every suit in respect of any act touching the business of the society, whether founded on contractual liability or to in torts. This suit under the Maharashtra Rent Control Act does not relate to the banking activity which is the business of the society and therefore a notice under section 164 of the Maharashtra Cooperative Societies Act is not required.

4. The second submission of the learned advocate is that the bank could not have been sued under section 41 of the Presidency Small Causes Court Act since admittedly the Bank had not lost possession and the suit for ejectment ought to have been filed under the Transfer of Property Act. This submission is of no avail to the Petitioner since section 41 of the Presidency Small Causes Court Act includes cases where the ejectment proceedings are filed under the Rent Act. In these circumstances, Petition is rejected.

5. Interim relief granted earlier to continue for the period of 12 weeks from today on an undertaking being furnished by the petitioner within four weeks from today that they would not create any third party rights.